

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DREW V. SPEER and THOMAS D. KENNEDY

Appeal No. 2006-0589
Application No. 09/860,388

ON BRIEF

Before KIMLIN, WARREN and TIMM, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 22-32.
Claims 22 and 27 are illustrative:

22. A multilayer film having a first outer surface, and a second outer surface, the multilayer film comprising a layer comprising an oxygen scavenger;

wherein the first outer surface comprises

iii) a printed image, and

iv) a radiation-curable varnish covering at least a portion of the printed image.

27. A multilayer film having a first outer surface, and a second outer surface, the multilayer film comprising a layer comprising

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an oxygen scavenger; wherein the first outer surface comprises a radiation-curable printed image.

The examiner relies upon the following references in the rejections of the appealed claims:

Arney et al. (Arney)	4,482,624	Nov. 13, 1984
Speer et al. (Speer)	5,350,622	Sep. 27, 1994

Independent claim 22 on appeal is directed to a multilayer film comprising a first outer surface having a printed image and a radiation-curable varnish covering at least a portion of the image. Independent claim 27 is drawn to a multilayer film having a first outer surface comprising a radiation-curable printed image and a layer comprising an oxygen scavenger, with no mention of a varnish covering the printed image.

Appealed claims 22, 24-27 and 29-32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Arney. Claims 23 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Arney in view of Speer.

We consider first the examiner's rejections of claims 22-26, 31 and 32.¹ These claims all require a radiation-curable varnish covering at least a portion of the printed image on the outer surface of the multilayer film. According to the examiner,

¹ We note that appellants do not separately argue the § 102 and § 103 rejections.

"[a]lthough the image formed prior to radiation curing [in Arney] is latent, it is still recognized and interpreted as an image" (page 5 of Answer, first paragraph). However, we do not find that a reasonable interpretation of the claimed "printed image" includes a latent image that is not visible to the human eye. Accordingly, we concur with appellants that Arney alone, or with Speer, renders the presently claimed radiation-curable varnish covering a printed image unpatentable under § 102 or § 103. Hence, we will not sustain the examiner's rejections of claims 22-26, 31 and 32.

The examiner's rejections of claims 27-30 are another matter. As explained above, claims 27-30 do not require a radiation-curable varnish covering a printed image. Since this recitation in claim 22 is the sole basis for appellants' traversal of the examiner's rejections, it follows that appellants have not rebutted the examiner's rejections under § 102 of claims 27, 29 and 30, and § 103 rejection of claim 28. We note that appellants' Brief presents no argument with respect to independent claim 27, but is focused only on claim 22. Accordingly, we will sustain the examiner's rejections of claims 27-30.

In conclusion, based on the foregoing, the examiner's rejections of claims 27-30 are sustained and the examiner's rejections of claims 22-26, 31 and 32 are reversed.

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Consequently, the examiner's decision rejecting the appealed claims is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED-IN-PART

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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CHARLES F. WARREN)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
CATHERINE TIMM)	
Administrative Patent Judge)	

ECK:clm

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